

**IN THE  
SUPREME COURT  
OF  
THE STATE OF ILLINOIS**

Order entered March 22, 2010.

(Deleted material is struck through and new material is underscored, except in Rule 430, which is entirely new.)

Effective immediately, Supreme Court Rule 3 and an administrative order in relation to Rule 3 are amended, and effective July 1, 2010, new Rule 430 is adopted as follows.

**Amended Rule 3**

**Rule 3. Rulemaking Procedures**

**(a) Purpose and Applicability.**

\_\_\_\_(1) These procedures are adopted to provide for the orderly and timely review of proposed rules and proposed amendments to existing rules of the Supreme Court; to provide an opportunity for comments and suggestions by the public, the bench, and the bar; to aid the Supreme Court in discharging its rulemaking responsibilities; to make a public record of all such proposals; and to provide for public access to an annual report concerning such proposals.

(2) The Supreme Court reserves the prerogative of departing from the procedures of this rule. An order of the Supreme Court adopting any rule or amendment shall constitute an order modifying these procedures to the extent, if any, they have not been complied with in respect to that proposal.

**(b) Supreme Court Rules Committee.** There shall be a Rules Committee which shall be appointed by the Supreme Court. The Administrative Office of the Illinois Courts shall serve as secretary of the Rules Committee. The Rules Committee shall have the following responsibilities:

(1) To implement rulemaking procedures, as provided in paragraph (d) of this rule, for proposed rules or amendments to existing rules received from the Administrative Office.

(2) To periodically review rules in areas which no other committee is specifically charged with the responsibility for reviewing to ensure that such rules facilitate the

administration of justice.

(3) To conduct public hearings and submit the annual report as required by administrative order of the Supreme Court. The annual report shall be a public record.

**(b) (c) Initiation of Proposal and Applicability.**

~~(1) Proposed rules and proposed amendments to existing rules of the Supreme Court, and subsequent inquiries or correspondence regarding such proposals, should be forwarded to the Illinois Supreme Court Rules Committee Administrative Office of the Illinois Courts, c/o Secretary-Supreme Court Rules Committee, 222 N. LaSalle Street, 13th Floor, Chicago, Illinois 60601. All proposals shall offer specific language for the proposed rule or amendment, as well as a concise explanation of the proposal.~~

~~(2) The Supreme Court reserves the prerogative of departing from the procedures of this rule. An order of the Supreme Court adopting any rule or amendment shall constitute an order modifying these procedures to the extent, if any, they have not been complied with in respect to that proposal.~~

**(c) (d) Responsibilities of Rules Committee Procedures for Proposed Rules and Rule Amendments.** ~~There shall be a Rules Committee which shall be appointed by the Supreme Court. The Administrative Office of the Illinois Courts shall serve as secretary of the Rules Committee. The Rules Committee shall have the following responsibilities:~~

~~(1) To receive from the Supreme Court, Judicial Conference committees, Supreme Court committees, the bench, the bar, and the public proposed rules or amendments to existing rules:~~

~~(A) If a proposed rule or an amendment to an existing rule is submitted by the Supreme Court, a judge, lawyer, or member of the public and the subject of the proposal is within the scope of a Supreme Court committee or a Judicial Conference committee, the Rules Committee shall forward the proposal to the appropriate committee of the Supreme Court or Judicial Conference for review and recommendation:~~

(1) If the substance of a proposal received under paragraph (c) of this rule is within the scope of a Supreme Court committee or Judicial Conference committee, the Administrative Office shall forward the proposal to the appropriate committee for review and recommendation.

The Administrative Office also shall forward a copy of the proposal to the Rules Committee, along with notice of the Supreme Court or Judicial Conference committee to which the proposal has been forwarded.

The Rules Committee shall ~~also~~ forward a copy of the proposal to the Clerk of the Supreme Court where it will be given a number and placed upon the docket of the Clerk of the Supreme Court.

The committee to which the proposal has been forwarded shall review the

proposal for content and style. Within 12 months of the transmission of the proposal from the ~~Rules Committee~~ Administrative Office, the committee to which the proposal has been forwarded shall ~~report to~~ advise the ~~Rules Committee~~ Administrative Office whether the proposal is recommended for adoption by the Supreme Court. If the proposal is recommended for adoption, the Rules Committee shall place the proposal on the agenda for the ~~annual~~ next public hearing. In its annual report to the Supreme Court, the Rules Committee shall report the docket number, the content of the proposal, any report submitted by the Supreme Court committee or Judicial Conference committee (including a minority report), the response to the proposal, any comments or revisions submitted by the Supreme Court committee or Judicial Conference committee, the Rules Committee's recommendation, and any alternative proposal the Rules Committee developed in response to public comment.

If the committee to which the proposal has been forwarded does not recommend the proposal for adoption by the Supreme Court, the Rules Committee shall not place the proposal on the agenda for ~~the~~ public hearing, but shall report the nonrecommended status to the Clerk of the Supreme Court and the Supreme Court in its annual report.

~~(B) (2) If a proposed rule or an amendment to an existing rule is submitted by the Supreme Court, a judge, a lawyer, or a member of the public and the proposal the substance of a proposal received under paragraph (c) is in an area where no other committee is specifically charged with responsibility, the~~ Administrative Office shall forward the proposal to the Rules Committee ~~shall for~~ review the proposal for of content and style.

~~If the proposal submitted has substantial merit, is not duplicative, and is within the Supreme Court's rulemaking authority, the Rules Committee shall forward the proposal to the Clerk of the Supreme Court where the Clerk of the Supreme Court shall give the proposal a number and place the proposal on the docket of the Clerk of the Supreme Court. The Rules Committee shall forward a copy of the proposal to the Clerk of the Supreme Court where it will be given a number and placed upon the docket of the Clerk of the Supreme Court.~~ If, after review, the Rules Committee determines that the proposal is recommended for adoption by the Supreme Court, the Rules Committee shall place the proposal on the agenda for the ~~annual~~ next public hearing. In its annual report to the Supreme Court, the Rules Committee shall report the docket number, the content of the proposal, the response to the proposal, the Rules Committee's recommendation, and any alternative proposal the Rules Committee developed in response to public comment.

If the proposal submitted does not have substantial merit, is duplicative of pending proposals, or is not within the Supreme Court's rulemaking authority, the Rules Committee ~~shall forward the proposal to the Clerk of the Supreme Court to be retained by the Clerk in a file entitled "Nondocketed Rules Proposals."~~ The Rules Committee shall not place these nondocketed rules the proposals on the agenda for

~~the annual~~ public hearing. However, the Rules Committee shall report ~~on nondocketed rules~~ the proposals as not recommended in its annual report to the Supreme Court.

~~(C)~~ (3) If a proposed rule or an amendment to an existing rule is submitted under paragraph (c) by a Supreme Court committee or a Judicial Conference committee, ~~the Rules Committee shall forward the proposal to the Clerk of the Supreme Court for docketing. The Clerk of the Supreme Court shall give the proposal a number and place it on the docket of the Clerk of the Supreme Court~~ the Administrative Office shall forward the proposal to the Rules Committee. The Rules Committee shall forward a copy of the proposal to the Clerk of the Supreme Court where it will be given a number and placed upon the docket of the Clerk of the Supreme Court. The Rules Committee shall not review the proposal.

The Rules Committee shall place the proposal on the agenda for the ~~annual~~ next public hearing. In its annual report to the Supreme Court, the Rules Committee shall report the docket number, the content of the proposal, any report submitted by the Supreme Court committee or Judicial Conference committee (including a minority report), the response to the proposal, any comments or revisions submitted by the Supreme Court committee or Judicial Conference committee, the Rules Committee's recommendation, and any alternative proposal the Rules Committee developed in response to public comment.

~~(2) To periodically review rules in areas which no other committee is specifically charged with the responsibility for reviewing to ensure that such rules facilitate the administration of justice.~~

~~(3) To conduct an annual public hearing and submit the annual report as required by administrative order of the Supreme Court. The annual report shall be a public record.~~

~~(d)~~ **(e) Responsibilities of Other Committees.** Each committee appointed by the Supreme Court, other than the Rules Committee, shall have the following responsibilities:

(1) To periodically review the entire body of rules for which the Supreme Court has indicated the committee is responsible to ensure that those rules continue to facilitate the administration of justice.

(2) To review proposed amendments to existing rules or proposals for new rules transmitted to it ~~the committee from the Rules Committee pursuant to Rule 3(c)(1)(A)~~ pursuant to paragraph (c) of this rule. Within 12 months of the transmission of the proposal from the ~~Rules Committee~~ Administrative Office, the committee shall ~~report to advise the Rules Committee~~ advise the Administrative Office whether the proposal is recommended or not recommended for adoption by the Supreme Court.

If the committee determines that a proposal that has been forwarded to it by the ~~Rules Committee~~ Administrative Office should be adopted, it shall so inform the

~~Rules Committee~~ Administrative Office and provide the ~~Rules Committee~~ Administrative Office with the original proposal and a statement of the committee's reasoning. ~~The Rules Committee shall place proposals recommended for adoption on the agenda for the annual public hearing and report on such proposals in its annual report to the Supreme Court.~~

If the committee determines that a proposal that has been forwarded to it by the ~~Rules Committee~~ Administrative Office should not be adopted, it shall so inform the ~~Rules Committee~~ Administrative Office and provide the ~~Rules Committee~~ Administrative Office with the original proposal and a statement of the committee's reasoning. ~~The Rules Committee shall not place proposals not recommended on the agenda for the annual public hearing but shall report the decision to the Supreme Court in its annual report.~~

~~(3) To designate such members of the committee as the committee considers necessary to represent the committee at any annual public meeting where a proposal that the committee recommends is scheduled to be held out for public comment. To designate the committee chair, or another member, to represent the committee at any Rules Committee public hearing where a proposal recommended by the committee is scheduled to be held out for public comment. The committee chair, or his or her designee, may sit with the Rules Committee for purposes of answering questions or addressing testimony from individuals offering public comment on the committee's proposal.~~

~~(4) Nothing in this rule shall preclude a Supreme Court or Judicial Conference committee from holding a public hearing independently of the Rules Committee, with prior approval of the Supreme Court.~~

**~~(e)~~ (f) Submissions Other Than Annual Report.** When the Rules Committee makes a submission of a proposed rule or amendment separate from its annual report, the committee shall, to the degree practicable, comply with the content requirements of the Supreme Court's administrative order concerning notice and hearing and shall accompany the submission with a statement of:

(1) its reasons for believing that the Court should take action on its proposal prior to the time for action on the next annual submission, and

(2) describe the steps taken by the committee to comply with the Supreme Court's administrative order regarding public notice, opportunity for comment, and public hearing.

**~~(f)~~ (g) Distribution of New Rules or Amendments.** Following the adoption of new rules or amendments, the Clerk of the Supreme Court shall promptly cause copies thereof to be distributed.

**~~(g)~~ (h) Effective Date of Rule Changes.** The effective date of all new rules or amendments shall be as ordered by the Supreme Court. If an effective date is not ordered, the new rule or amendment shall take effect on the following July 1.

Adopted September 28, 1994, effective October 1, 1994; amended December 3, 1997, effective January 1, 1998; amended October 5, 2000, effective November 1, 2000; amended May 24, 2006, effective immediately; amended March 22, 2010, effective immediately.

## ADMINISTRATIVE ORDER

MR No. 10549

### **(a) ~~Annual~~ Public Meetings**

(1) Except as otherwise provided in Rule 3, no rule shall be presented to the Court for adoption without first having been held out for public comment by the bench, bar and public at an ~~annual~~ public meeting of the Rules Committee, ~~which shall be held on the fourth Monday in January.~~

(2) All proposals ~~for~~ which the Rules Committee has completed its style and content review and those proposals submitted to the Rules Committee by other Supreme Court committees and Judicial Conference committees recommended for adoption by the Supreme Court ~~on or before the last Friday in October~~ shall be considered at the next ~~annual~~ public meeting. Any proposal on which the Rules Committee has not completed its content review or any proposal which a Supreme Court committee or Judicial Conference committee has not forwarded to the Rules Committee for placement on the ~~annual~~ public meeting agenda ~~before the last Friday in October~~ will not be considered at the next ~~annual~~ public meeting.

(3) ~~On or before the second Monday in November~~ A public hearing may be scheduled when either the significance of a particular proposal or the number of proposals ready for public comment would justify holding such a hearing. At least 60 days prior to the date designated for the public hearing, the Rules Committee shall cause notice of the ~~annual~~ public meeting, ~~along with copies of the proposed rules or amendments, the docket number of each proposal and an invitation for comments to be distributed as follows:~~

- ~~— (i) one copy to each judge;~~
- ~~— (ii) one copy to each clerk of the court to be posted in a conspicuous place;~~
- ~~— (iii) copies to such publications as deemed appropriate;~~
- ~~— (iv) copies to the President of the Senate, Speaker of the House and chairpersons of the Senate and House judiciary committees;~~
- ~~— (v) copies to any bar association or other interested organization which requests, in writing, to be placed on the mailing list;~~
- ~~— (vi) copies to such other persons and places as the Chief Justice may direct.~~

by the most economical means, including notification through the Illinois Court's electronic messaging services, such as list mail or Twitter broadcasts. Additionally, a hard copy of the notice shall be mailed to each clerk of the court to be posted in a conspicuous place. The text of the proposed rules or amendments shall be posted on

the Court's Web site, with hard copies available by request from the Administrative Office of the Illinois Courts.

(4) Each committee of the Supreme Court may within 21 days following the ~~annual~~ public meeting respond to public comments received at the meeting by submitting to the Rules Committee:

- (i) any revision to a proposal that was recommended by the committee, or
- (ii) responsive comments of the committee.

(5) A committee of the Judicial Conference may within 21 days following the ~~annual~~ public meeting respond to public comments received at the meeting in the following manner. The committee may submit to the Conference (or the Executive Committee acting in its stead) for approval any revision to a proposal that was recommended by the committee or any responsive comment. The revised rule or response to public comments shall be included in the annual report on proposed rules and amendments unless the Conference instructs otherwise within 21 days of its receipt of the submission.

**(b) Annual Report on Proposed Rules and Amendments**

(1) ~~Within 30 days after it has received all responses and comments from the relevant committees of the Supreme Court or the Judicial Conference,~~ The Rules Committee shall submit its annual report on rules to the Chief Justice and file it with the Clerk of the Supreme Court.

(2) The report shall include for each proposal: the docket number, the content of the proposal, any report submitted by the Supreme Court committee or Judicial Conference committee (if applicable) including any minority report, the response to the proposal, any comments or revisions submitted by the Supreme Court committee or Judicial Conference committee (if applicable), the Rules Committee's recommendation, and any alternative proposal the Rules Committee developed in response to public comment.

(3) The annual report shall be a public record.

(4) Whenever a lengthy rule or amendment is recommended, the Rules Committee shall prepare and submit a summary thereof for distribution. Whenever the Administrative Office distributes such a summary, the Office shall make provision for supplying the full text of the recommended rule or amendment to any interested person upon reasonable request.

Adopted September 28, 1994, effective October 1, 1994; amended December 3, 1997, effective January 1, 1998; amended October 5, 2000, effective November 1, 2000; amended March 22, 2010, effective immediately.

**New Rule 430**

**Rule 430. Trial of Incarcerated Defendant**

An accused shall not be placed in restraint of any form unless there is a manifest need for restraint to protect the security of the court, the proceedings, or to prevent escape. Persons charged with a criminal offense are presumed innocent until otherwise proven guilty and are entitled to participate in their defense as free persons before the jury or bench. Any deviation from this right shall be based on evidence specifically considered by the trial court on a case-by-case basis. The determination of whether to impose a physical restraint shall be limited to trial proceedings in which the defendant's innocence or guilt is to be determined, and does not apply to bond hearings or other instances where the defendant may be required to appear before the court prior to a trial being commenced. Once the trial judge becomes aware of restraints, prior to allowing the defendant to appear before the jury, he or she shall conduct a separate hearing on the record to investigate the need for such restraints. At such hearing, the trial court shall consider and shall make specific findings as to:

- (1) the seriousness of the present charge against the defendant;
- (2) defendant's temperament and character known to the trial court either by observation or by the testimony of witnesses;
- (3) defendant's age and physical attributes;
- (4) defendant's past criminal record and, more particularly, whether such record contains crimes of violence;
- (5) defendant's past escapes, attempted escapes, or evidence of any present plan to escape;
- (6) evidence of any threats made by defendant to harm others, cause a disturbance, or to be self-destructive;
- (7) evidence of any risk of mob violence or of attempted revenge by others;
- (8) evidence of any possibility of any attempt to rescue the defendant by others;
- (9) size and mood of the audience;
- (10) physical security of the courtroom, including the number of entrances and exits, the number of guards necessary to provide security, and the adequacy and availability of alternative security arrangements.

After allowing the defendant to be heard and after making specific findings, the trial judge shall balance these findings and impose the use of a restraint only where the need for restraint outweighs the defendant's right to be free from restraint.

Adopted March 22, 2010, effective July 1, 2010.



Commentary  
(March 22, 2010)

This rule codifies the holdings in *People v. Boose*, 66 Ill. 2d 261 (1977), and *People v. Allen*, 222 Ill. 2d 340 (2006).